

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

07/24/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-008754
CV 2002-008755

FILED: _____

MV ACCEPTANCE LTD

DAVID BRNILOVICH

v.

SAMUEL ARTEAGA, et al.

SAMUEL ARTEAGA
1526 W WILLETТА
PHOENIX AZ 85006-0000

JOSEPHINE ARTEAGA
1526 W WILLETТА
PHOENIX AZ 85006-0000
EDWARD PASTRANO
3005 W. CAMELBACK RD
PHOENIX AZ 85017-0000
ROSA PASTRANO
3005 W. CAMELBACK RD
PHOENIX AZ 85017-0000
PHX JUSTICE CT-SOUTH
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This Court has reviewed and considered Appellant's memorandum and the file from the South Phoenix Justice Court. Appellees (Defendants in the court below who failed to appear or

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answer complaints served upon them) have chosen not to file any memorandum with the court.

The only issue presented for review is whether the trial judge erred in denying Appellant's Motion for Default Judgment. The trial judge denied Appellant's Motion for Default Judgment in both of the cases consolidated within this appeal on the basis that the statute of limitations had run.

Appellant correctly argues that the statute of limitations is a defense which must be raised pursuant to Rule 8(d), Arizona Rules of Civil Procedure. This defense must be raised by a party, not the court. This defense may be waived when a party fails to affirmatively plead it. Since the statute of limitations was an affirmative defense which could only be plead by a party, it was error for the trial judge to deny Appellant's Motion for Default Judgments.

IT IS THEREFORE ORDERED reversing the order of the South Phoenix Justice Court denying Appellant's Motion for Default Judgment.

IT IS FURTHER ORDERED remanding these cases back to the South Phoenix Justice Court with instructions to reschedule the matter for a default hearing, and to enter judgment accordingly.